



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

09/816,290

03/21/2001

Michael F. Culbert

APLIP211/P2656

6108

63464

7590

11/23/2009

BEYER LAW GROUP LLP/APPLE INC.

P.O. BOX 1687

CUPERTINO, CA 95015-1687

EXAMINER

CZEKAJ, DAVID J

ART UNIT

PAPER NUMBER

2621

NOTIFICATION DATE

DELIVERY MODE

11/23/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOmail@beyerlaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL F. CULBERT

Appeal 2009-000962
Application 09/816,290
Technology Center 2600

Decided: November 19, 2009

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Appellant's invention relates to a method of increasing the speed and quality of compressing edited video data in accordance with Moving Picture Experts Group (MPEG) compression standards (Spec. 1-2). Video data, such as that recorded on a camcorder or VCR, is edited on a computer system with known video editing software, creating a video track, an audio track, and an edit track (Spec. 2, 5). Each editing step of the video data creates data stored in an edit track (Spec. 5). An edit track reader "generates instructions based on the data within the data track. A video compressor receives instruction from the edit track reader and receives the edited video track and audio track, and compresses the edited video according to the instructions from the edit track reader" (Abstract).

Claims 1-10 are directed towards a computer readable medium containing program instructions. When loaded onto a computer, the claimed instructions will cause the computer to compress edited video data in accordance with the invention. Claims 11-16 are directed towards a method of compressing video data with an edited video track in accordance with the present invention. Independent claim 17 is directed towards a system for compressing video data with an edited video track, the system including an

edit track reader and a video compressor.¹ All of the claims require that “the recorded editing steps made by a user using video editing software in the edit track are used for compressing the video data.” Independent claim 1 is illustrative (emphasis ours):

1. A computer readable medium containing program instructions for compressing video data with an edit track comprising computer readable code for compressing the video data, wherein the computer readable code for compressing comprises computer readable code for accessing the edit track to use data in the edit track during the compressing, wherein the edit track records editing steps made by a user using video editing software and *wherein the recorded editing steps made by a user using video editing software in the edit track are used for compressing the video data.*

Claims 1-4, 11-14, and 17-20 stand rejected under 35 U.S.C. § 102(e) as anticipated by US Patent 6,671,323 B1, issued to Tahara December 30, 2003.

Claims 5-10, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as obvious over Tahara in view of US Patent 5,802,361, issued to Wang September 1, 1998.

The Examiner concludes that Tahara discloses, *inter alia*, using the user recorded editing steps for compressing the video (e.g., Ans. 6).² More

¹ We note that claims 18-20 include an ambiguity. Each of claims 18-20 states that the claim, like independent claim 17, is directed towards a “system.” However, “system” claims 18 and 19 both state that they depend from method claim 11. “System” claim 20 states that it depends from method claim 13.

² Rather than repeat the arguments of Appellant or the Examiner, we refer to the Appeal Brief (filed Nov. 15, 2006); the Examiner’s Answer (filed Feb. 23, 2007); and the Reply Brief (filed Apr. 23, 2007) for their respective Footnote continued on the next page.

specifically, the Examiner concludes that (1) the MPEG_ES_Editing_information, including the V-phase and H-phase information, is used for compressing the video data; and therefore (2) the recorded editing steps are used for compressing the video data (*id.*).

Appellant acknowledges that the MPEG_ES_Editing_information contains various types of information including V-phase and H-phase, but asserts that only some of the types of information contained in MPEG_ES_Editing_information relates to user editing information (Reply Br. 5). In specific regard to the V-phase and H-phase information, Appellant asserts (App. Br. 6):

. . . Tahara disclose[s] that the V-phase and H-phase indicate the first line to be encoded or compressed in a frame. Although V-phase and H-phase are part of the MPEG_ES_editing_information, and although V-phase and H-phase are used during the video compression process, the two variables – V-phase and H-phase – are not recorded editing steps made by the user, as recited in claims 1, 11, and 17. [Instead] of being recorded editing steps made by the user[,] the Examiner stated that the V-phase and H-phase indicate the first line to be encoded or compressed in a frame. The using of V-phase and H-phase by Tahara during the vide[o] compression is not equivalent to the using editing steps made by the user as recorded in the editing track by the present application.

Appellant further asserts that Tahara nowhere discloses that the information specifically relating to user editing information, such as

details. In this decision, we have considered only those arguments actually made by Appellant. Arguments which Appellant could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Ancillary_data, is used during the compressing of the video data (*id.*). “Instead, the ancillary data is extracted from the video data during the compression process, inserted into the encoded streams as Ancillary_data, and sent to the destination along with the rest of the encoded video data.” (Reply Br. 5-6).

We agree with Appellant’s reading of Tahara. Tahara does disclose that editing data may be sent along with compressed video data, but Tahara does not appear to disclose using any information that can be deemed to constitute recorded editing steps made by a user in the edit track for compressing the video data. Rather, Tahara discusses the problem of ancillary video data transmitted from a broadcast station being lost during conventional MPEG encoding (col. 1-3). Tahara overcomes this problem with an

MPEG encoder [that] extracts ancillary data from the video data, inserts the extracted ancillary data into encoded streams as Ancillary_data, and thereby sends the ancillary data together with the encoded streams. The MPEG decoder extracts the ancillary data from the encoded streams and adds it to the base-band video data generated by MPEG decoding.

(col. 3, ll. 59-65).

For the foregoing reasons Appellant has persuaded us of error in the Examiner’s anticipation rejection of independent claims 1, 11, and 17. Accordingly, we do not sustain the Examiner’s rejection of those claims or the rejection of claims 2-4, 12-14, and 18-20, which depend therefrom.

With respect to the obviousness rejection of remaining dependent claims 5-10, 15, and 16, Wang does not cure the deficiency of the

anticipation rejection over Tahara explained above. Accordingly, we will not sustain the Examiner's rejection of claims 5-10, 15, and 16 either.

CONCLUSION OF LAW

Appellant has shown that the Examiner erred in finding that Tahara discloses recorded editing steps that are made by a user in an edit track and used for compressing video data. As such, Appellant has shown that the Examiner erred in rejecting claims 1-20 under 35 U.S.C. §§ 102 and 103.

DECISION

We do not sustain the Examiner's rejections with respect to all pending claims on appeal. Therefore, the Examiner's decision rejecting claims 1-20 is reversed.

REVERSED

gvw

BEYER LAW GROUP LLP/APPLE INC.
P. O. BOX 1687
CUPERTINO, CA 95015-1657